

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC 2007-33

DOUGLAS R. WACHTEL
941 Wilmington Way
Redwood City, CA 94602-4068

Certified Public Accountant Certificate
No. CPA 52277,

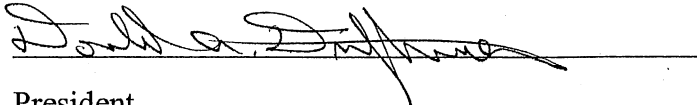
Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order, revoking Certified Public Accountant Certificate No. CPA 52277, heretofore issued to Douglas R. Wachtel, is hereby adopted by the California Board of Accountancy as its Decision in this matter.

This Decision shall become effective on October 26, 2008.

It is so ORDERED September 26, 2008.



President
FOR THE CALIFORNIA BOARD OF ACCOUNTANCY

RECEIVED
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EDMUND G. BROWN JR., Attorney General
of the State of California
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Attorneys for Complainant

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STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DOUGLAS R. WACHTEL
941 Wilmington Way
Redwood City, CA 94602-4068

Certified Public Accountant Certificate
No. CPA 52277,

Respondent.

Case No. AC 2007-33

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

In the interest of settlement of this matter, consistent with the public interest and the responsibilities of the California Board of Accountancy of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation No. 2007-33, relating to the Certified Public Accountant Certificate of Respondent Douglas R. Wachtel.

PARTIES AND JURISDICTION

1. Carol Sigmann, Complainant, is the Executive Officer of the California Board of Accountancy (the "Board"). She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown, Jr., Attorney General of the State of California, and by Jeanne C. Werner, Deputy Attorney General.

2. Respondent Douglas R. Wachtel is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about January 27, 1989, the California Board of Accountancy issued Certified Public Accountant Certificate No. CPA 52277 to Douglas R. Wachtel (Respondent). The Certificate expired on February 29, 2004, and has not been renewed.

4. Accusation No. AC-2007-33 was filed before the California Board of Accountancy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 12, 2007. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. AC-2007-33 is attached as exhibit A and incorporated herein by reference.

WAIVERS & CONTINGENCY

5. Respondent has carefully read and understands the charges and allegations in Accusation No. AC-2007-33. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every one of these rights.

7. The parties understand and agree that, in signing this stipulation rather than further contesting the Accusation, Respondent is voluntarily consenting to the adoption of this Stipulated Settlement as the Board's Decision, enabling the Board of Accountancy of the State of California to issue the following order without further legal process. Respondent represents that no tender, offer, promises, threats or inducements of any kind whatsoever have been made by the Board or

1 any member, officer, agent or representative thereof in consideration of this settlement offer or
2 otherwise to induce him to so consent.

3 8. This stipulation shall be subject to approval by the Board. Respondent understands
4 and agrees that Complainant, her counsel and the staff of the Board may communicate directly
5 with the Board regarding this stipulation and settlement, without notice to or participation by
6 Respondent. By signing the stipulation, Respondent understands and agrees that he may not
7 withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers
8 and acts upon it.

9 9. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated
10 Settlement and Disciplinary Order shall be withdrawn. It shall be of no force or effect, except for
11 this paragraph. It shall have no evidentiary value, shall be inadmissible in any legal action
12 between the parties, and shall not be relied upon or introduced in any disciplinary, or other,
13 action or proceeding by either party hereto. In the event that the Stipulated Settlement is not
14 adopted, nothing recited herein shall be construed as a waiver of Respondent's right to a hearing
15 or as an admission of the truth of any of the matters charged. Communications pursuant to this
16 paragraph, and consideration of this matter, shall not disqualify the Board or other persons from
17 future participation in this or any other matter affecting Respondent. Respondent agrees that
18 should the Board reject this Stipulated Settlement and if this case proceeds to hearing,
19 Respondent will assert no claim that the Board was prejudiced by its review and discussion of
20 this Stipulation or of any records related hereto.

21 **ADMISSIONS AND FURTHER STIPULATIONS BETWEEN THE PARTIES**

22 10. Respondent, without admitting or denying the allegations in the SEC Complaint,
23 admits the truth of each and every charge and allegation in Accusation No. AC 2007-33.

24 11. Based upon the foregoing admissions, Respondent stipulates that his license is
25 subject to discipline as charged in the Accusation, and that these admissions and charges provide
26 the basis for the Board's discipline of his license. Respondent agrees that his license is subject to
27 discipline under Business and Professions Code Section 5100, as set forth in Accusation No. AC-
28 2007-33, and agrees to be bound by the Board's imposition of discipline as set forth in the

1 Disciplinary Order below. Respondent further agrees not to take any action or make any public
2 statement that creates, or tends to create, the impression that any of the matters set forth in the
3 Stipulated Settlement and Disciplinary Order are without a factual basis. Respondent stipulates
4 that he has abided by the terms of the SEC Judgment and the SEC Order referenced in
5 paragraphs 11 through 13 of the Accusation.

6 12. Pursuant to Code Section 5107, the Board's costs of investigation and prosecution of
7 this matter are \$5214.05. Respondent understands that Code Section 5107(j)(1) provides that
8 the Board shall not reinstate the license of one who has failed to pay all of the costs ordered
9 under Code Section 5107. Code Section 5107(j)(2) provides that the Board may, in its
10 discretion, conditionally reinstate for a maximum of one year the certificate of a holder who
11 demonstrated financial hardship and who enters into a formal agreement with the Board to
12 reimburse the Board within that one-year period for those unpaid costs. Respondent understands
13 that reimbursement of costs is considered by the Board as a rehabilitation factor should
14 Respondent file a petition for reinstatement. Respondent stipulates that he will abide by the
15 provisions of Code Section 5107 and will reimburse the Board those costs as provided therein
16 should the board reinstate his certificate in the future.

17 13. The parties understand and agree that facsimile copies of this Stipulated Settlement
18 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
19 effect as the originals.
20

21 **DISCIPLINARY ORDER**

22 **IN CONSIDERATION OF THE FOREGOING** admissions and stipulations, the
23 parties agree that the Board may, without further notice or formal proceeding, issue and enter the
24 following Disciplinary Order:

25 **IT IS HEREBY ORDERED** that Certified Public Accountant Certificate No. CPA
26 12411 issued to Respondent Douglas R. Wachtel is revoked. The Respondent is ordered to pay
27 the Board its reasonable costs of investigation and prosecution under Code Section 5107 as
28 provided herein.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: 8/12/2008.



DOUGLAS R. WACHTEL
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy.

DATED: _____

EDMUND G. BROWN JR., Attorney General
of the State of California

WILBERT E. BENNETT
Supervising Deputy Attorney General

JEANNE C. WERNER
Deputy Attorney General

Attorneys for Complainant

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED: _____.

DOUGLAS R. WACHTEL
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy.

DATED: July 29, 2008

EDMUND G. BROWN JR., Attorney General
of the State of California

WILBERT E. BENNETT
Supervising Deputy Attorney General

Jeanne C. Werner
JEANNE C. WERNER
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: SF2007400612
90064325_2.wpd

Exhibit A
Accusation No. AC 2007-33

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 WILBERT E. BENNETT
Supervising Deputy Attorney General
3 JEANNE C. WERNER, State Bar No. 93170
Deputy Attorney General
4 California Department of Justice
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5 Oakland, CA 94612-0550
Telephone: (510) 622-2226/Facsimile: (510) 622-2121

6 Attorneys for Complainant
7
8

9 **BEFORE THE**
10 **CALIFORNIA BOARD OF ACCOUNTANCY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. AC 2007-33

14 DOUGLAS R. WACHTEL
451 Day Street
San Francisco, California 94131

ACCUSATION

15 Certified Public Accountant Certificate
No. CPA 52277,

16
17 Respondent.
18

19 Complainant alleges:

20 **PARTIES and JURISDICTION**

21 1. The Complainant herein, Carol Sigmann, brings this action under Business and
22 Professions Code Section 5100 solely in her official capacity as the Executive Officer of the
23 California Board of Accountancy, Department of Consumer Affairs ("Board").

24 2. On or about January 27, 1989, the Board issued Certified Public Accountant
25 Certificate Number CPA 52277 to Douglas R. Wachtel, Respondent. The Certified Public
26 Accountant Certificate expired on March 1, 2004, has not been renewed, and is thus in a
27 delinquent status.

28 3. This Accusation is brought before the Board under the authority of Section 5100 of

1 the Business and Professions Code,^{1/} which provides, in relevant part, that, after notice and
2 hearing, the board may revoke, suspend or refuse to renew any permit or certificate granted, for
3 unprofessional conduct including, but not limited to:

4 A. The suspension of the right to practice before any governmental body or agency (Code
5 Section 5100(h)); and

6 B. The imposition of any discipline, penalty, or sanction on the holder of a permit,
7 certificate, license, or other authority to practice in this state by the United States Securities and
8 Exchange Commission (Code Section 5100(l)).

9 4. Code Sections 118(b) and 5109 provide in pertinent part that the suspension,
10 expiration, cancellation, or forfeiture of a license issued by the Board shall not deprive the Board
11 of its authority to investigate, or to institute or continue a disciplinary proceeding against a
12 licensee upon any ground provided by law, or to enter an order suspending or revoking the
13 license, or otherwise taking disciplinary action against the licensee on any such ground.

14 5. Code Section 5107 authorizes the Board's recovery of certain costs which result from
15 the investigation and prosecution of violations of the Accountancy Act. Code Section 5107(a)
16 provides in pertinent part that the executive officer of the Board may request the administrative
17 law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a
18 permit or certificate found to have violated the Accountancy Act to pay to the Board all
19 reasonable costs of investigation and prosecution of the case, including, but not limited to,
20 attorneys' fees incurred prior to the commencement of the hearing. A certified copy of the actual
21 costs, or a good faith estimate of costs signed by the Executive Officer, constitute prima facie
22 evidence of reasonable costs of investigation and prosecution of the case.

23 6. Code Section 5000.1 provides as follows: "Protection of the public shall be the
24 highest priority for the California Board of Accountancy in exercising its licensing, regulatory,
25 and disciplinary functions. Whenever the protection of the public is inconsistent with other
26

27 1. All statutory references are to the Business and Professions Code unless otherwise
28 indicated.

1 interests sought to be promoted, the protection of the public shall be paramount.”

2
3 **CIRCUMSTANCES SUPPORTING THE IMPOSITION
OF DISCIPLINE ON RESPONDENT**

4 7. The circumstances supporting the imposition of discipline against Respondent
5 Wachtel are summarized below.

6 8. Respondent served as Controller of NextCard, Inc., from 1998 to 2003. NextCard
7 maintained its principal place of business in San Francisco, California, and was engaged in the
8 business of issuing credit cards over the Internet. NextCard’s common stock was registered with
9 the SEC and traded on the NASDAQ National Market. NextCard declared bankruptcy in
10 November 2002. As described below, Respondent Wachtel was the subject of two separate
11 proceedings initiated by the Securities and Exchange Commission.

12 SEC Civil Case

13 9. The first SEC action involved a civil suit filed (in September 2004) in the Federal
14 District Court, Northern District of California, entitled *Securities and Exchange Commission v.*
15 *Jeremy R. Lent, John V. Hashman, Yinzi Cai, Douglas Wachtel and Bruce Rigione, Defendants*
16 (Case No. C-04-4088-CW).

17 10. The SEC’s Complaint alleged that Wachtel and the other defendants, all former
18 officers of NextCard, engaged in a fraudulent scheme which resulted in NextCard filing
19 materially false and misleading financial statements in the company’s annual report on Form 10-
20 K for the fiscal year ended December 31, 2000, and in the company’s quarterly reports on Form
21 10-Q for the first two quarters of fiscal year 2001. The Complaint alleged that Wachtel and the
22 other defendants failed to disclose several changes in NextCard’s accounting policies, including:
23 (1) the reclassification of certain credit losses as fraud losses; and (2) changes in NextCard’s
24 policy for calculating its loan loss reserve. According to the Complaint, as a result of these
25 undisclosed accounting policy changes, investors were misled and denied material information
26 concerning the rising levels of losses on NextCard’s credit card portfolio.

27 11. Respondent Wachtel consented to the entry, on October 26, 2006, of a Final
28 Judgment (“Consent”), in which he, without admitting or denying the allegations of the

1 Complaint (except as to jurisdiction), agreed to the imposition of a permanent injunction from
2 violating Section 17(a) of the Securities Act; the imposition of a permanent injunction from
3 violating Section 13(a) of the Exchange Act or Section 15(d) of the Exchange Act; the
4 imposition of a permanent injunction from violating Section 13(b)(2)(A) of the Exchange Act or
5 Section 15(d) of the Exchange Act; his disgorgement of \$21,000, representing proceeds from
6 his sales of NextCard common stock, together with prejudgment interest in the amount of
7 \$1,223; and payment of civil penalties in the amount of \$71,000, for a total of \$93,223.

8 Respondent Wachtel was also prohibited for five years from acting as an officer or director of
9 any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or
10 that is required to file reports pursuant to Section 15(d) of the Exchange Act.

11 SEC Administrative Proceeding

12 12. The second SEC proceeding, an administrative proceeding captioned *In the Matter*
13 *of Douglas Wachtel (CPA), Respondent*, Exchange Act Rel. No. 55133², was resolved on
14 January 19, 2007, by the issuance of an *Order Instituting Administrative Proceedings Pursuant*
15 *to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial*
16 *Sanctions* against Wachtel, in which proceeding Respondent consented to the entry of the
17 Commission's order suspending him from appearing or practicing before the Commission as an
18 accountant. The Order provides that Respondent may request that the Commission consider his
19 reinstatement after 5 years from the date of the Order, that is, after January 19, 2012.

20 13. The SEC made findings summarizing the allegations of the Complaint referenced in
21 paragraph 10, and imposed a suspension on Respondent based upon its authority to suspend from
22 appearing or practicing before it any accountant who has been permanently enjoined by any court
23 of competent jurisdiction, by reason of his misconduct in an action brought by the Commission,
24 from violating or aiding and abetting the violation of any provision of the Federal securities laws
25 or of the rules and regulations thereunder. (Rule 102(e)(3)(i).

26
27
28 2. The case also bears *Accounting and Auditing Enforcement Release No. 2543*, and
Administrative Proceeding File No. 3-12542.

1 **FIRST AND SECOND CAUSES FOR DISCIPLINE**

2 **Imposition of Discipline, Penalty or Sanction by PCAOB or SEC**
3 **[Business and Professions Code Section 5100(I)]**

4 14. Incorporating by reference the matters alleged in paragraphs 8 through 11 above, the
5 Certified Public Accountant Certificate of Respondent Wachtel is subject to disciplinary action,
6 in that the court's *Final Judgment* entered against Respondent in Case No. C-04-4088-CW
7 constitutes the imposition of penalties and sanctions on the Respondent by the United States
8 Securities and Exchange Commission or its designee under federal legislation within the
9 meaning of Code Section 5100(I), establishing cause for discipline of Respondent's license under
10 Code Section 5100.

11 15. Incorporating by reference the matters alleged in paragraphs 8, 12 and 13 above, the
12 Certified Public Accountant Certificate of Respondent Wachtel is subject to disciplinary action,
13 in that the Commission's Order Instituting Administrative Proceedings Pursuant to Rule 102(e)
14 of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions
15 ("Order"), which suspended Respondent from practice as an accountant before the Commission,
16 constitutes the imposition of discipline on the Respondent by the United States Securities and
17 Exchange Commission within the meaning of Code Section 5100(I), establishing cause for
18 discipline of Respondent's license under Code Section 5100.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **Suspension of Right to Practice Before a Governmental Body or Agency**
21 **[Business and Professions Code § 5100(h)]**

22 16. Incorporating by reference the matters alleged in paragraphs 8, 12 and 13 above,
23 Respondent's suspension from practice on January 19, 2007, before the SEC constitutes the
24 suspension of the right to practice before a governmental agency within the meaning of Code
25 Section 5100(h), and said suspension is substantially related to the qualifications, duties or
26 functions of a certified public accountant, establishing cause for discipline of Respondent's
27 Certified Public Accountant Certificate under Code Section 5100.
28

1 OTHER MATTERS

2 Cost Recovery

3 17. Pursuant to Code Section 5107, it is requested that the administrative law judge, as
4 part of the proposed decision in this proceeding, direct Respondent to pay to the Board all
5 reasonable costs of investigation and prosecution in this case, including, but not limited to,
6 attorneys' fees.

7 PRAYER

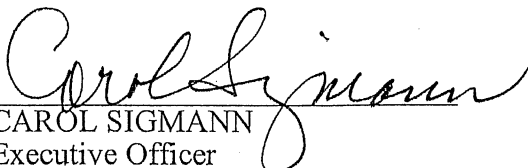
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

10 1. Revoking, suspending, or otherwise imposing discipline upon Certified Public
11 Accountant Certificate Number CPA 52277 issued to Douglas R. Wachtel;

12 2. Ordering Douglas R. Wachtel to pay the California Board of Accountancy the
13 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
14 Professions Code section 5107;

15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: July 9, 2007

17 
18 CAROL SIGMANN
19 Executive Officer
20 California Board of Accountancy
21 Department of Consumer Affairs
22 State of California
23 Complainant

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